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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

By Hand

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, N.W.  
Washington, DC 20554

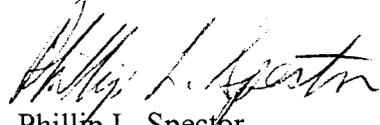
Ex Parte Communication – Report No. SPB-196;  
SAT-PDR-20020425-00071

Dear Ms. Dortch:

On April 1, 2004, Nancy Eskenazi, Vice President and Associate General Counsel of SES AMERICOM, Inc. ("SES AMERICOM"); Kimberly Baum, Manager, Satellite Market Development, SES AMERICOM; and the undersigned, attorney for SES AMERICOM, met in person with Barry Ohlson and Anne Perkins, Office of Commissioner Adelstein, for the purpose of discussing matters identified in the attached

document, which was distributed at the meeting. We are filing an original and one copy of this letter and the attachment in each of the referenced dockets.

Respectfully submitted,



Phillip L. Spector

Attorney for SES AMERICOM, Inc.

Attachment

cc (via e-mail, with attachment):

Barry Ohlson

Anne Perkins

Qualex International

**THE FCC SHOULD NOT INITIATE A RULEMAKING ON  
REDUCED ORBITAL SPACING OF DBS SATELLITES**

- **The FCC rules already provide an effective mechanism for evaluating proposals for satellites at reduced spacing.**
  - The DBS bands are internationally planned, and governed by Appendices 30 and 30A of the ITU Radio Regulations.
  - Appendices 30 and 30A contain procedures for modifying the “BSS Plans,” including to accommodate satellites at reduced orbital spacing. These procedures prescribe international coordination to protect existing systems.
  - The FCC rules incorporate these international procedures. Compliance with these rules is essentially the only technical qualification imposed by the FCC on DBS applicants. (*See* 47 C.F.R. §§ 25.111(c), 25.114(c)(22), 25.148(f).)
  - In its 2002 revision of the DBS rules, the FCC explicitly held that these procedures ensure adequate protection of existing systems, while permitting new entry. With reduced-spacing scenarios fully in mind, the FCC declined to adopt other technical constraints. (*2002 DBS Order*, ¶ 130.)
  
- **The FCC should continue to support the existing coordination procedures.**
  - The FCC has consistently followed the international procedures in licensing U.S. DBS satellites.
    - The modification procedures have been used for all U.S. DBS satellites in operation today.
    - The FCC itself has undertaken to modify the BSS Plans to introduce satellites at locations that were not assigned in the original BSS Plans, not only for service to the Americas, but also to Europe and Asia.
    - The FCC has required U.S. licensees to honor the ITU priority system.
    - The FCC is currently participating in a number of coordinations involving DBS satellites at reduced spacing, including SES AMERICOM’s proposed satellite at 105.5°.
  - Coordination will result in more DBS capacity than a rulemaking.
    - Coordination avoids imposing restrictive “one-size-fits-all” requirements. Technical rules cannot effectively take into account the differences in the sharing conditions at each individual DBS slot, and can preclude otherwise viable sharing arrangements.
    - Coordination allows the sharing arrangement between operators to evolve as requirements change, for example, as new satellites are launched. Formal rulemakings cannot keep up with such changes.
    - The acceptable range of values for many technical parameters (such as power levels) depends on the values of other system parameters. Rules of general applicability cannot take advantage of such flexibility.

- A satellite designed to meet a one-size-fits-all requirement in all operational scenarios will necessarily result in degraded capacity at some or all orbital slots, resulting in lost capacity to the consumer.
    - Innovations -- such as spot beams, higher order modulation and coding, and HDTV -- can be, and routinely are, taken into account in coordination.
    - All of these advantages of coordination have been exploited by U.S. DBS operators to date, to permit, for example, smaller dishes and spot-beam satellites.
  - Coordination has been used successfully for decades across many satellite bands. Even among potential competitors, agreements permitting new services have been developed in good faith. There is no reason why coordination will not function well in this case.
  - The FCC, via its participation in each coordination, and its ultimate responsibility for agreements reached, can fully pursue its policy objectives.
- **The FCC should reject EchoStar's proposal to tie the technical issues of reduced orbital spacing to the question of U.S. market entry by foreign-licensed satellites.**
    - The two issues are not linked in any logical way.
    - There is no reason to re-open issues resolved by adoption of the ECO-Sat test.
- **Initiation of a rulemaking conflicts with key FCC policy objectives that require increased DBS capacity in the near-term.**
    - The FCC has found that more competition is needed in multichannel video.
    - It has also encouraged DBS providers to offer more local-into-local and HDTV channels.
    - Authorization of new BSS satellites, consistent with ITU coordination procedures, will further these policy objectives within a two-year timeframe.
    - By contrast, a rulemaking will introduce more delay, in a process that has already been delayed unreasonably.
- **SES AMERICOM could have launched a BSS satellite for 105.5° WL in 2004.**
    - The SES AMERICOM Petition for Declaratory Ruling has been pending with the FCC for two years, despite the fact that the Petition complies with all FCC rules and policies and is ripe for grant.
    - When it filed this Petition in April 2002, SES AMERICOM indicated it could launch a new satellite, offering new DBS services, by 2004.
    - The FCC should focus on authorizing new services and promoting competition, resisting DirecTV's self-serving attempt to introduce additional delay.